Duquesne Light Company *and* International Brotherhood of Electrical Workers, System Council U-10 Representing Locals 140 and 149, AFL–CIO. Case 6–CA–23291

March 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On December 31, 1991, Administrative Law Judge David S. Davidson issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Duquesne Light Company, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Patricia Scott, Esq., for the General Counsel.
Thomas S. Giotto, Esq. (Klett Lieber Rooney & Schorling), of Pittsburgh, Pennsylvania, for the Respondent.
Neil McGowan, of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID S. DAVIDSON, Administrative Law Judge. This case was tried in Pittsburgh, Pennsylvania, on July 19, 1991. International Brotherhood of Electrical Workers, System Council U-10, representing Locals 140 and 149, AFL–CIO (the Union) filed the charge on January 17, 1991. The complaint issued on February 22, 1991, alleging that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union information about certain nonunit classifications on its request. The Respondent denies the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the brief filed by the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, is a public utility with its principal office located in Pittsburgh, Pennsylvania. During a representative 12-month period Respondent had gross revenues in excess of $250,000, and purchased goods and materials valued in excess of $50,000 from sources outside Pennsylvania. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

For a number of years the Union has been the exclusive collective-bargaining representative of clerical employees in a number of job classifications in eight certified bargaining units. The Respondent and the Union have been parties to a number of successive collective-bargaining agreements, the most recent of which is effective from October 1, 1990, until October 1, 1993. Stenographers are included in the bargaining units, but secretary/stenographers are not.

Article I of the collective-bargaining agreement deals with representation and recognition. In it Respondent recognizes the Union as the representative of the employees in eight bargaining units for which the local unions identified in the agreement were certified as representatives. Article I, section B states:

> Employees referred to herein, together with the work usually performed by them, are listed by job titles in Exhibit A attached hereto and made a part hereof.

Article I, section D provides for inclusion by agreement of certain classifications not included or named in the units as originally certified and concludes:

> In consideration thereof, it is further understood and agreed that the Union does not at this time, nor will it during the term of this Agreement, claim jurisdiction over, or seek to represent, or represent any other classifications now in existence.

In 1984 Respondent began an extensive internal reorganization which was not completed at the time of the hearing in this case. In the course of the reorganization the Respondent has established a number of new departments and manager positions. A number of the positions established to provide secretarial support for the new managers were classified as secretary/stenographer positions outside the collective-bargaining units.

In accordance with the Respondent's practice for lower level jobs outside the bargaining units, Respondent posted notices of vacancies as the new secretary-stenographer positions were established and filled. The notices, referred to as green sheets, were posted at 110 locations in Respondent's system, and at least for the last several years copies of the notices were routinely sent to the Union when posted.[1]

The Union became increasingly concerned over the classification of these positions as exempt positions and at several periodic communication meetings with the Respondent asked about the increase in the number of secretary/stenographer

[1] The green sheets contain a synopsis of the duties of the posted position. Full job descriptions are available to employees at test study libraries at 13 or 14 different locations in Respondent's facilities.

positions and why they were considered to be nonunit positions. Respondent's representatives replied that they were confidential positions. Union representatives expressed the view that the work the excluded secretary/stenographers were performing was really bargaining unit work.

In two instances in 1989 and 1990 local union officials raised questions about the duties of specific secretary/stenographer positions, and management arranged meetings between union officials and the department heads to which the secretary/stenographers were assigned to permit the union officials to question them further about the duties of the secretary/stenographers. After these meetings the union representatives remained dissatisfied, and a further meeting was arranged at which a company legal representative spoke about confidentiality matters and the decision to place the secretary/stenographers in their job classifications for confidentiality reasons.

On November 9, 1990, in response to requests from officers of Locals 140 and 149, Union Business Manager McGowan wrote Respondent's Director of Union Relations Edwards as follows:

> The Union requests the following information from the Company in order for the Union to properly administer the contract:
>
> 1. The names of the secretary/stenographers the Company has designated as exempt employees.
> 2. Their duties.
> 3. The names of their direct supervisor and department.
>
> Thank you.

After sending the letter, McGowan asked Edwards several times when he would receive the information, and Edwards replied that he had no answer at that time. Before Christmas McGowan again asked Edwards when he thought the Union might receive the information, and Edwards replied that the Union's request was in the hands of his attorneys who would reply. Edwards also said that McGowan should realize that he could not organize the secretary/stenographers in any event. McGowan stated that he had no intention of organizing them but that he thought that because of their duties they might belong in the unit and that the Union wanted the information to determine whether they fell within the definition of confidential employees. Edwards asked what definition, and he replied either Board law or the contract.[2]

On January 17 having received no further answer from Respondent, the Union filed the charge in this case. On January 30, 1991, Edwards sent McGowan the following letter:

> Please consider this letter Duquesne Light Company's response to your request for information concerning the Company non-Union secretaries and stenographers.
>
> It is not apparent from your letter dated November 9, 1990 as to how this information may be relevant to ''properly administer the Contract'' or any grievances related in any way to this group of employees. As a result, without a more complete explanation of why or how the requested information would be useful to the Union, it is the Company's position that these non-Union positions are excluded from any claim of Union jurisdiction by Article I, D of the Agreement.

On February 7 McGowan telephoned Edwards and reminded him of their pre-Christmas conversation. Edwards said that he did not remember it, and McGowan repeated what he had said at that time. Edwards said that he would pass it onto upper management.[3] The Union received no further response from the Respondent, and the Union sent Respondent no further reply to Respondent's January 30 letter.

B. *Concluding Findings*

The principles which govern this case are set forth in *Bohemia, Inc.*, 272 NLRB 1128, 1129 (1984).

> It is well established that an employer must provide a union with requested information ''if there is a probability that such data is relevant and will be of use to the union in fulfilling its statutory duties and responsibilities as the employees' exclusive bargaining representative.'' *Associated General Contractors of California*, 242 NLRB 891, 893 (1979), enfd. 633 F.2d 766 (9th Cir. 1980); *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). The Board uses a liberal, discovery-type standard to determine whether information is relevant, or potentially relevant, to require its production. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). Information about terms and conditions of of employees actually represented by a union is presumptively relevant and necessary and is required to be produced. *Ohio Power Co.*, 216 NLRB 987 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976). Information necessary for processing grievances under a collective-bargaining agreement, including that necessary to decide whether to proceed with a grievance or arbitration, must be provided as it falls within the ambit of the parties' duty to bargain. *NLRB v. Acme Industrial*, supra; *Bickerstaff Clay Products*, 266 NLRB 983 (1983).
>
> However, when a union's request for information concerns data about employees or operations other than those represented by the union, or data on financial, sales, and other information, there is no presumption that the information is necessary and relevant to the union's representation of employees. Rather, the union is under the burden to establish the relevance of such information. *Ohio Power*, supra.

Here the information sought by the Union related to employees who were outside the bargaining unit. Therefore, there is no presumption that the requested information is necessary and relevant to the union's representation of the employees in the bargaining units. However, while the Union

[2] McGowan so testified. Edwards testified that he recalled telling McGowan that he did not think that McGowan was entitled to the information, but that he would get a formal answer because he was having his legal people review it. He testified that he did not remember McGowan telling him why the Union wanted the information or why he felt that the Union was entitled to it.

[3] Edwards testified that he had no recollection of McGowan telling him why the Union needed the information but that it could have happened. I have credited McGowan as to both conversations with Edwards about the reason the Union wanted the information.

has the burden of showing the relevance of the requested information, ''that burden is not exceptionally heavy.''[4]

Counsel for the General Counsel contends that the burden was met here by the showing that the Union was concerned that secretary/stenographers were performing bargaining unit work, that the Union had expressed that concern in the past, and that McGowan told Edwards that the reason it sought the information about the secretary/stenographers was to determine whether they were confidential employees which the Union believed was essential to their exclusion from the bargaining unit.

Respondent contends that the burden of establishing relevance has not been met because the Union's request for information is based on no more than a mere suspicion that secretary/stenographers are performing bargaining unit work and lacks any objective basis. Respondent also contends that it was not obligated to furnish the requested information because it was readily available to the Union through nonburdensome procedures.

There is little question that the relevance of the requested information is established if the Union had a sufficiently objective basis for believing that secretary/stenographers were doing bargaining unit work. In *Bohemia, Inc*., supra, on which Respondent relies, the Board found that there was no obligation to furnish information relating to the possible transfer of bargaining unit work to another location where the request was based solely on the suspicion that some bargaining unit work had been transferred.

Here, the Union not only suspected that Respondent had created a number of new positions classified as secretary/stenographers but it had direct knowledge of many of them. It had discussed two of them at some length with management and was not satisfied with the answers it had been given. It was not a matter of mere suspicion that the positions had been created. Knowledge as to the nature of the duties of each of the positions was necessarily more limited, but sufficient to raise a question as to whether they should have been classified as stenographers within the bargaining unit pursuant to article I, section B, of the collective-bargaining agreement.

An employer is obligated to furnish information among other things to enable a union to decide whether there is sufficient merit to a complaint to warrant filing a grievance or taking a grievance to arbitration.[5] The information sought by the Union was necessary and relevant to that determination.

Respondent contends in the alternative that the information was otherwise readily available to the Union because copies of notices of vacancies were routinely sent to the Union and full job descriptions were available in company libraries. However, absent the information it requested from Respondent, the Union had no way of knowing whether it had received all the notices that were posted for secretary/stenographer positions, and the record indicates that the practice of sending these notices to the Union started some time after the reorganization began. The more complete job descriptions were never in the Union's possession. While they may have been available for inspection and copying at company libraries, the existence of that alternative means does not excuse the Respondent of its obligation to furnish the information to the Union.[6]

Accordingly, I find that by failing and refusing to furnish the information requested in the Union's November 9, 1990 letter, Respondent violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Respondent, Duquesne Light Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Electrical Workers, System Council U-10, representing Locals 140 and 149, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times material International Brotherhood of Electrical Workers, System Council U-10, representing Locals 140 and 149, AFL–CIO has been the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act for units of Respondent's clerical employees as set forth more completely in the collective-bargaining agreement between the Union and Respondent effective October 1, 1990.

4. By failing and refusing to furnish the Union with the information requested by it by letter dated November 9, 1990, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, Duquesne Light Company, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with International Brotherhood of Electrical Workers, System Council U-10, representing Locals 140 and 149, AFL–CIO as the exclusive representative of Respondent's clerical employees by refusing to furnish the Union the information requested in the Union's letter to the Respondent dated November 9, 1990.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

---

[4] *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983).

[5] *Blue Diamond Co.*, 295 NLRB 1007 (1989).

[6] *Postal Service*, 276 NLRB 1282, 1288 (1985). Unlike *Leland Stanford Junior University*, supra, on which Respondent relies, here Respondent had not previously furnished to the Union all the information from which the requested information could be compiled. It is not clear that all of the notices had been sent to the Union, and none of the job descriptions had been furnished to it.

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request furnish the Union in writing the information requested in the Union's letter to the Respondent dated November 9, 1990.

(b) Post at its facilities in Pittsburgh, Pennsylvania, copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with International Brotherhood of Electrical Workers, System Council U-10, representing Locals 140 and 149, AFL–CIO as the exclusive representative of our clerical employees by refusing to furnish the Union the information requested in the Union's letter to us dated November 9, 1990.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL on request furnish the Union in writing the information requested in its letter to us dated November 9, 1990, that is relevant and necessary to its role as the exclusive bargaining representative of our employees in the bargaining unit.

DUQUESNE LIGHT COMPANY